

REFERENCE TITLE: technical correction; prime contracting classification

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2246

Introduced by
Representative Burns J

AN ACT

AMENDING SECTION 42-5075, ARIZONA REVISED STATUTES; RELATING TO THE PRIME
CONTRACTING TRANSACTION PRIVILEGE TAX CLASSIFICATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-5075, Arizona Revised Statutes, is amended to
3 read:

4 42-5075. Prime contracting classification; exemptions;
5 definitions

6 A. The prime contracting classification is comprised of the business
7 of prime contracting and dealership of manufactured buildings. Sales for
8 resale to another dealership of manufactured buildings are not subject to
9 tax. Sales for resale do not include sales to a lessor of manufactured
10 buildings. The sale of a used manufactured building is not taxable under
11 this chapter. The proceeds from alteration and repairs to a used
12 manufactured building are taxable under this section.

13 B. The tax base for the prime contracting classification is sixty-five
14 per cent of the gross proceeds of sales or gross income derived from the
15 business. The following amounts shall be deducted from the gross proceeds of
16 sales or gross income before computing the tax base:

17 1. The sales price of land, which shall not exceed the fair market
18 value.

19 2. Sales and installation of groundwater measuring devices required
20 under section 45-604 and groundwater monitoring wells required by law,
21 including monitoring wells installed for acquiring information for a permit
22 required by law.

23 3. The sales price of furniture, furnishings, fixtures, appliances and
24 attachments that are not incorporated as component parts of or attached to a
25 manufactured building or the setup site. The sale of such items may be
26 subject to the taxes imposed by article 1 of this chapter separately and
27 distinctly from the sale of the manufactured building.

28 4. The gross proceeds of sales or gross income received from a
29 contract entered into for the construction, alteration, repair, addition,
30 subtraction, improvement, movement, wrecking or demolition of any building,
31 highway, road, railroad, excavation, manufactured building or other
32 structure, project, development or improvement located in a military reuse
33 zone for providing aviation or aerospace services or for a manufacturer,
34 assembler or fabricator of aviation or aerospace products within an active
35 military reuse zone after the zone is initially established or renewed under
36 section 41-1531. To be eligible to qualify for this deduction, before
37 beginning work under the contract, the prime contractor must have applied for
38 a letter of qualification from the department of revenue.

39 5. The gross proceeds of sales or gross income derived from a contract
40 to construct a qualified environmental technology manufacturing, producing or
41 processing facility, as described in section 41-1514.02, and from subsequent
42 construction and installation contracts that begin within ten years after the
43 start of initial construction. To qualify for this deduction, before
44 beginning work under the contract, the prime contractor must obtain a letter
45 of qualification from the department of revenue. This paragraph shall apply

1 for ten full consecutive calendar or fiscal years after the start of initial
2 construction.

3 6. The gross proceeds of sales or gross income from a contract to
4 provide for one or more of the following actions, or a contract for site
5 preparation, constructing, furnishing or installing machinery, equipment or
6 other tangible personal property, including structures necessary to protect
7 exempt incorporated materials or installed machinery or equipment, and
8 tangible personal property incorporated into the project, to perform one or
9 more of the following actions in response to a release or suspected release
10 of a hazardous substance, pollutant or contaminant from a facility to the
11 environment, unless the release was authorized by a permit issued by a
12 governmental authority:

13 (a) Actions to monitor, assess and evaluate such a release or a
14 suspected release.

15 (b) Excavation, removal and transportation of contaminated soil and
16 its treatment or disposal.

17 (c) Treatment of contaminated soil by vapor extraction, chemical or
18 physical stabilization, soil washing or biological treatment to reduce the
19 concentration, toxicity or mobility of a contaminant.

20 (d) Pumping and treatment or in situ treatment of contaminated
21 groundwater or surface water to reduce the concentration or toxicity of a
22 contaminant.

23 (e) The installation of structures, such as cutoff walls or caps, to
24 contain contaminants present in groundwater or soil and prevent them from
25 reaching a location where they could threaten human health or welfare or the
26 environment.

27 This paragraph does not include asbestos removal or the construction or use
28 of ancillary structures such as maintenance sheds, offices or storage
29 facilities for unattached equipment, pollution control equipment, facilities
30 or other control items required or to be used by a person to prevent or
31 control contamination before it reaches the environment.

32 7. The gross proceeds of sales or gross income that is derived from a
33 contract entered into for the installation, assembly, repair or maintenance
34 of machinery, equipment or other tangible personal property that is deducted
35 from the tax base of the retail classification pursuant to section 42-5061,
36 subsection B, or that is exempt from use tax pursuant to section 42-5159,
37 subsection B, and that does not become a permanent attachment to a building,
38 highway, road, railroad, excavation or manufactured building or other
39 structure, project, development or improvement. If the ownership of the
40 realty is separate from the ownership of the machinery, equipment or tangible
41 personal property, the determination as to permanent attachment shall be made
42 as if the ownership were the same. The deduction provided in this paragraph
43 does not include gross proceeds of sales or gross income from that portion of
44 any contracting activity which consists of the development of, or
45 modification to, real property in order to facilitate the installation,

1 assembly, repair, maintenance or removal of machinery, equipment or other
2 tangible personal property that is deducted from the tax base of the retail
3 classification pursuant to section 42-5061, subsection B or that is exempt
4 from use tax pursuant to section 42-5159, subsection B. For the purposes of
5 this paragraph, "permanent attachment" means at least one of the following:

6 (a) To be incorporated into real property.
7 (b) To become so affixed to real property that it becomes a part of
8 the real property.

9 (c) To be so attached to real property that removal would cause
10 substantial damage to the real property from which it is removed.

11 8. Through December 31, 2009, the gross proceeds of sales or gross
12 income received from a contract for constructing any lake facility
13 development in a commercial enhancement reuse district that is designated
14 pursuant to section 9-499.08 if the prime contractor maintains the following
15 records in a form satisfactory to the department and to the city or town in
16 which the property is located:

17 (a) The certificate of qualification of the lake facility development
18 issued by the city or town pursuant to section 9-499.08, subsection D.

19 (b) All state and local transaction privilege tax returns for the
20 period of time during which the prime contractor received gross proceeds of
21 sales or gross income from a contract to construct a lake facility
22 development in a designated commercial enhancement reuse district, showing
23 the amount exempted from state and local taxation.

24 (c) Any other information that the department considers to be
25 necessary.

26 9. The gross proceeds of sales or gross income attributable to the
27 purchase of machinery, equipment or other tangible personal property that is
28 exempt from or deductible from transaction privilege and use tax under:

29 (a) Section 42-5061, subsection A, paragraph 25 or 29.

30 (b) Section 42-5061, subsection B.

31 (c) Section 42-5159, subsection A, paragraph 13, subdivision (a), (b),
32 (c), (d), (e), (f), (i), (j) or (l).

33 (d) Section 42-5159, subsection B.

34 10. The gross proceeds of sales or gross income received from a
35 contract for the construction of an environmentally controlled facility for
36 the raising of poultry for the production of eggs and the sorting, cooling
37 and packaging of eggs.

38 11. The gross proceeds of sales or gross income that is derived from a
39 contract entered into with a person who is engaged in the commercial
40 production of livestock, livestock products or agricultural, horticultural,
41 viticultural or floricultural crops or products in this state for the
42 construction, alteration, repair, improvement, movement, wrecking or
43 demolition or addition to or subtraction from any building, highway, road,
44 excavation, manufactured building or other structure, project, development or

1 improvement used directly and primarily to prevent, monitor, control or
2 reduce air, water or land pollution.

3 12. The gross proceeds of sales or gross income that is derived from
4 the installation, assembly, repair or maintenance of clean rooms that are
5 deducted from the tax base of the retail classification pursuant to section
6 42-5061, subsection B, paragraph 17.

7 13. For taxable periods beginning from and after June 30, 2001, the
8 gross proceeds of sales or gross income derived from a contract entered into
9 for the construction of a residential apartment housing facility that
10 qualifies for a federal housing subsidy for low income persons over sixty-two
11 years of age and that is owned by a nonprofit charitable organization that
12 has qualified under section 501(c)(3) of the internal revenue code.

13 14. For taxable periods beginning from and after December 31, 1996 and
14 ending before January 1, 2011, the gross proceeds of sales or gross income
15 derived from a contract to provide and install a solar energy device. The
16 contractor shall register with the department as a solar energy
17 contractor. By registering, the contractor acknowledges that it will make
18 its books and records relating to sales of solar energy devices available to
19 the department for examination.

20 15. The gross proceeds of sales or gross income derived from a contract
21 entered into for the construction of a launch site, as defined in 14 Code of
22 Federal Regulations section 401.5.

23 16. The gross proceeds of sales or gross income derived from a contract
24 entered into for the construction of a domestic violence shelter that is
25 owned and operated by a nonprofit charitable organization that has qualified
26 under section 501(c)(3) of the internal revenue code.

27 17. The gross proceeds of sales or gross income derived from contracts
28 to perform postconstruction treatment of real property for termite and
29 general pest control, including wood destroying organisms.

30 18. The gross proceeds of sales or gross income received from contracts
31 entered into before July 1, 2006 for constructing a state university research
32 infrastructure project if the project has been reviewed by the joint
33 committee on capital review before the university enters into the
34 construction contract for the project. For the purposes of this paragraph,
35 "research infrastructure" has the same meaning prescribed in section 15-1670.

36 19. The gross proceeds of sales or gross income received from a
37 contract for the construction of any building, or other structure, project,
38 development or improvement owned by a qualified business under section
39 41-1516 for harvesting or the initial processing of qualifying forest
40 products removed from qualifying projects as defined in section 41-1516 if
41 actual construction begins before January 1, 2010. To qualify for this
42 deduction, the prime contractor must obtain a letter of qualification from
43 the department of commerce before beginning work under the contract.

44 20. The gross proceeds of sales or gross income received from a
45 contract for the construction of any building or other structure associated

1 with motion picture production in this state. To qualify for the deduction,
2 at the time the contract is entered into the motion picture production
3 company must present to the prime contractor its certificate that is issued
4 pursuant to section 42-5009, subsection H and that establishes its
5 qualification for the deduction.

6 21. Any amount of the gross proceeds of sales or gross income from a
7 contract that constitutes development or impact fees paid to the state or a
8 local government to offset governmental costs of providing public
9 infrastructure, public safety and other public services to a development.

10 C. Entitlement to the deduction pursuant to subsection B, paragraph 7
11 of this section is subject to the following provisions:

12 1. A prime contractor may establish entitlement to the deduction by
13 both:

14 (a) Marking the invoice for the transaction to indicate that the gross
15 proceeds of sales or gross income derived from the transaction was deducted
16 from the base.

17 (b) Obtaining a certificate executed by the purchaser indicating the
18 name and address of the purchaser, the precise nature of the business of the
19 purchaser, the purpose for which the purchase was made, the necessary facts
20 to establish the deductibility of the property under section 42-5061,
21 subsection B, and a certification that the person executing the certificate
22 is authorized to do so on behalf of the purchaser. The certificate may be
23 disregarded if the prime contractor has reason to believe that the
24 information contained in the certificate is not accurate or complete.

25 2. A person who does not comply with paragraph 1 of this subsection
26 may establish entitlement to the deduction by presenting facts necessary to
27 support the entitlement, but the burden of proof is on that person.

28 3. The department may prescribe a form for the certificate described
29 in paragraph 1, subdivision (b) of this subsection. The department may also
30 adopt rules that describe the transactions with respect to which a person is
31 not entitled to rely solely on the information contained in the certificate
32 provided in paragraph 1, subdivision (b) of this subsection but must instead
33 obtain such additional information as required in order to be entitled to the
34 deduction.

35 4. If a prime contractor is entitled to a deduction by complying with
36 paragraph 1 of this subsection, the department may require the purchaser who
37 caused the execution of the certificate to establish the accuracy and
38 completeness of the information required to be contained in the certificate
39 which would entitle the prime contractor to the deduction. If the purchaser
40 cannot establish the accuracy and completeness of the information, the
41 purchaser is liable in an amount equal to any tax, penalty and interest which
42 the prime contractor would have been required to pay under article 1 of this
43 chapter if the prime contractor had not complied with paragraph 1 of this
44 subsection. Payment of the amount under this paragraph exempts the purchaser
45 from liability for any tax imposed under article 4 of this chapter. The

1 amount shall be treated as a transaction privilege tax to the purchaser and
2 as tax revenues collected from the prime contractor in order to designate the
3 distribution base for purposes of section 42-5029.

4 D. Subcontractors or others who perform services in respect to any
5 improvement, building, highway, road, railroad, excavation, manufactured
6 building or other structure, project, development or improvement are not
7 subject to tax if they can demonstrate that the job was within the control of
8 a prime contractor or contractors or a dealership of manufactured buildings
9 and that the prime contractor or dealership is liable for the tax on the
10 gross income, gross proceeds of sales or gross receipts attributable to the
11 job and from which the subcontractors or others were paid.

12 E. Amounts received by a contractor for a project are excluded from
13 the contractor's gross proceeds of sales or gross income derived from the
14 business if the person who hired the contractor executes and provides a
15 certificate to the contractor stating that the person providing the
16 certificate is a prime contractor and is liable for the tax under article 1
17 of this chapter. The department shall prescribe the form of the
18 certificate. If the contractor has reason to believe that the information
19 contained on the certificate is erroneous or incomplete, the department may
20 disregard the certificate. If the person who provides the certificate is not
21 liable for the tax as a prime contractor, that person is nevertheless deemed
22 to be the prime contractor in lieu of the contractor and is subject to the
23 tax under this section on the gross receipts or gross proceeds received by
24 the contractor.

25 F. Every person engaging or continuing in this state in the business
26 of prime contracting or dealership of manufactured buildings shall present to
27 the purchaser of such prime contracting or manufactured building a written
28 receipt of the gross income or gross proceeds of sales from such activity and
29 shall separately state the taxes to be paid pursuant to this section.

30 G. For the purposes of section 42-5032.01, the department shall
31 separately account for revenues collected under the prime contracting
32 classification from any prime contractor engaged in the preparation or
33 construction of a multipurpose facility, and related infrastructure, that is
34 owned, operated or leased by the tourism and sports authority pursuant to
35 title 5, chapter 8.

36 H. The gross proceeds of sales or gross income derived from a contract
37 for lawn maintenance services are not subject to tax under this section if
38 the contract does not include landscaping activities. Lawn maintenance
39 service is a service pursuant to section 42-5061, subsection A, paragraph 1,
40 and includes lawn mowing and edging, weeding, repairing sprinkler heads or
41 drip irrigation heads, seasonal replacement of flowers, refreshing gravel,
42 lawn de-thatching, seeding winter lawns, leaf and debris collection and
43 removal, tree or shrub pruning or clipping, garden and gravel raking and
44 applying pesticides, as defined in section 3-361, and fertilizer materials,
45 as defined in section 3-262.

1 I. The gross proceeds of sales or gross income derived from
2 landscaping activities are subject to tax under this section. Landscaping
3 includes installing lawns, grading or leveling ground, installing gravel or
4 boulders, planting trees and other plants, felling trees, removing or
5 mulching tree stumps, removing other imbedded plants, building or modifying
6 irrigation berms, repairing sprinkler or watering systems, installing
7 railroad ties and installing underground sprinkler or watering systems.

8 J. The portion of gross proceeds of sales or gross income attributable
9 to the actual direct costs of providing architectural or engineering services
10 that are incorporated in a contract is not subject to tax under this
11 section. For the purposes of this subsection, "direct costs" means the
12 portion of the actual costs that are directly expended in providing
13 architectural or engineering services.

14 K. Operating a landfill or a solid waste disposal facility is not
15 subject to taxation under this section, including filling, compacting and
16 creating vehicle access to and from cell sites within the
17 landfill. Constructing roads to a landfill or solid waste disposal facility
18 and constructing cells within a landfill or solid waste disposal facility may
19 be deemed prime contracting under this section.

20 L. The following apply to manufactured buildings:

21 1. For sales in this state where the dealership of manufactured
22 buildings contracts to deliver the building to a setup site or to perform the
23 setup in this state, the taxable situs is the setup site.

24 2. For sales in this state where the dealership of manufactured
25 buildings does not contract to deliver the building to a setup site or does
26 not perform the setup, the taxable situs is the location of the dealership
27 where the building is delivered to the buyer.

28 3. For sales in this state where the dealership of manufactured
29 buildings contracts to deliver the building to a setup site that is outside
30 this state, the situs is outside this state and the transaction is excluded
31 from tax.

32 M. Notwithstanding subsection N, paragraph 8 of this section, a person
33 owning real property who enters into a contract for sale of the real
34 property, who is responsible to the new owner of the property for
35 modifications made to the property in the period subsequent to the transfer
36 of title and who receives a consideration for the modifications is considered
37 a prime contractor solely for purposes of taxing the gross proceeds of sale
38 or gross income received for the modifications made subsequent to the
39 transfer of title. The original owner's gross proceeds of sale or gross
40 income received for the modifications shall be determined according to the
41 following methodology:

42 1. If any part of the contract for sale of the property specifies
43 amounts to be paid to the original owner for the modifications to be made in
44 the period subsequent to the transfer of title, the amounts are included in
45 the original owner's gross proceeds of sale or gross income under this

1 section. Proceeds from the sale of the property THAT ARE received after
2 transfer of title AND that are unrelated to the modifications made subsequent
3 to the transfer of title ~~will~~ ARE not ~~be~~ considered gross proceeds of sale or
4 gross income from the modifications.

5 2. If the original owner enters into an agreement separate from the
6 contract for sale of the real property providing for amounts to be paid to
7 the original owner for the modifications to be made in the period subsequent
8 to the transfer of title to the property, the amounts are included in the
9 original owner's gross proceeds of sale or gross income received for the
10 modifications made subsequent to the transfer of title.

11 3. If the original owner is responsible to the new owner for
12 modifications made to the property in the period subsequent to the transfer
13 of title and derives any gross proceeds of sale or gross income from the
14 project subsequent to the transfer of title other than a delayed disbursement
15 from escrow unrelated to the modifications, it is presumed that the amounts
16 are received for the modifications made subsequent to the transfer of title
17 unless the contrary is established by the owner through its books, records
18 and papers kept in the regular course of business.

19 4. The tax base of the original owner is computed in the same manner
20 as a prime contractor under this section.

21 N. For the purposes of this section:

22 1. "Contracting" means engaging in business as a contractor.

23 2. "Contractor" is synonymous with the term "builder" and means any
24 person or organization that undertakes to or offers to undertake to, or
25 purports to have the capacity to undertake to, or submits a bid to, or does
26 personally or by or through others, modify any building, highway, road,
27 railroad, excavation, manufactured building or other structure, project,
28 development or improvement, or to do any part of such a project, including
29 the erection of scaffolding or other structure or works in connection with
30 such a project, and includes subcontractors and specialty contractors. For
31 all purposes of taxation or deduction, this definition shall govern without
32 regard to whether or not such contractor is acting in fulfillment of a
33 contract.

34 3. "Dealership of manufactured buildings" means a dealer who either:

35 (a) Is licensed pursuant to title 41, chapter 16 and who sells
36 manufactured buildings to the final consumer.

37 (b) Supervises, performs or coordinates the excavation and completion
38 of site improvements, setup or moving of a manufactured building including
39 the contracting, if any, with any subcontractor or specialty contractor for
40 the completion of the contract.

41 4. "Manufactured building" means a manufactured home, mobile home or
42 factory-built building, as defined in section 41-2142.

43 5. "Modification" means construction, alteration, repair, addition,
44 subtraction, improvement, movement, wreckage or demolition.

- 1 6. "Modify" means to construct, alter, repair, add to, subtract from,
2 improve, move, wreck or demolish.
- 3 7. "Prime contracting" means engaging in business as a prime
4 contractor.
- 5 8. "Prime contractor" means a contractor who supervises, performs or
6 coordinates the modification of any building, highway, road, railroad,
7 excavation, manufactured building or other structure, project, development or
8 improvement including the contracting, if any, with any subcontractors or
9 specialty contractors and who is responsible for the completion of the
10 contract. Except as provided in subsections E and M of this section, a
11 person who owns real property, who engages one or more contractors to modify
12 that real property and who does not itself modify that real property is not a
13 prime contractor within the meaning of this paragraph regardless of the
14 existence of a contract for sale or the subsequent sale of that real
15 property.
- 16 9. "Sale of a used manufactured building" does not include a lease of
17 a used manufactured building.